

2016 Regular Session

HOUSE BILL NO. 839

BY REPRESENTATIVE SEABAUGH

INSURANCE/PROPERTY: Provides for a property insurance program mediation program

1 AN ACT

2 To enact R.S. 22:1272, relative to an alternative procedure for resolution of disputed  
3 property insurance claims; to provide procedures and requirements for the mediation  
4 program; to provide for appointment for mediators; to provide for payment of the  
5 costs of mediation; to provide for promulgation of regulations; and to provide for  
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 22:1272 is hereby enacted to read as follows:

9 §1272. Property insurance mediation program

10 A. The legislature of Louisiana hereby finds and declares that there is a need  
11 for a mediation program as an optional, nonadversarial, voluntary alternative dispute  
12 resolution procedure that will promote fair, efficient, and prompt handling of certain  
13 property insurance claims and reduce the need for litigation.

14 B. Mediation pursuant to this Section is an option available to the parties to  
15 a dispute with respect to property claims under personal lines residential and  
16 commercial lines residential policies prior to the commencement of the appraisal  
17 process or litigation. It is also available to litigants referred to the commissioner by  
18 a court having jurisdiction over such claims.

19 C. Mediation pursuant to this Section is only available for policies or  
20 coverages specified below:

1           (1) Personal lines residential coverage consisting of the type of coverage  
2           provided by homeowners', mobile home owner, dwelling, tenant, condominium unit  
3           owner, cooperative unit owner and similar policies.

4           (2) Commercial lines residential coverage consisting of the type of coverage  
5           provided by condominium association, cooperative association, apartment building  
6           and similar policies.

7           D. Mediation pursuant to this Section may be requested only by the  
8           policyholder as a first-party claimant, or the insurer, or their respective legal  
9           representatives.

10          E. The insurer shall notify the policyholder of the right to request mediation  
11          pursuant to this Section. The commissioner shall prepare a consumer information  
12          pamphlet for distribution to policyholders regarding the mediation program.

13          F. The insurer shall bear the costs of the mediation pursuant to this Section.  
14          The costs shall be reasonable as determined by the commissioner.

15          G. The commissioner shall promulgate rules or regulations, including  
16          emergency rules or regulations, for a property insurance mediation program to be  
17          administered by the commissioner pursuant to this Section. The rules or regulations  
18          shall provide for:

- 19           (1) The costs of the mediation.  
20           (2) The processing of requests for and the scheduling of the mediation.  
21           (3) The qualifications for the mediators.  
22           (4) The selection of the mediators.  
23           (5) The attendance of the parties to the mediation.  
24           (6) The criteria for the conduct of the mediation.  
25           (7) The attendance of legal counsel.  
26           (8) The allocation of the costs of the mediation including any actual costs  
27           incurred by the parties in the event a party fails or refuses to appear at the mediation.  
28           (9) The requirement that each party attending the mediation have the legal  
29           authority to settle the full value of the claim.

1           (10) The requirement that the fees assessed by the administrator include a  
2           charge necessary to defray the expenses of the commissioner related to his duties  
3           pursuant to this Section.

4           (11) Any other matters that the commissioner deems applicable, relevant,  
5           and appropriate for the implementation and administration of a property insurance  
6           mediation program.

7           H. All statements made and documents produced at the mediation shall be  
8           deemed privileged and confidential pursuant to R.S. 9:4112.

9           I. If the mediation results in a settlement of all or any portion of a disputed  
10          property claim, the settlement so reached shall be reduced to writing by the mediator,  
11          signed by all parties, and shall become enforceable as a transaction or compromise  
12          between the parties. The insurer shall be obligated to pay the sum agreed upon within  
13          thirty days of the date the parties execute the written settlement agreement. Any  
14          settlement agreement reached between the parties shall be binding and act as a  
15          release of the disputed property claims that were presented and settled at the  
16          mediation. The failure or refusal of the insurer to pay the full amount agreed upon  
17          in settlement shall entitle the policyholder to a cause of action against the insurer  
18          pursuant to the provisions of R.S. 22:1973.

19          J. If the insurer fails to comply with Subsection E of this Section by failing  
20          to notify a policyholder of his right to request mediation, or if the insurer requests  
21          the mediation and the mediation results are rejected by either party, the policyholder  
22          is not required to submit to or participate in any contractual loss appraisal process  
23          regarding the property loss damage as a precondition to legal action for breach of  
24          contract against the insurer for its failure to pay the policyholder's claims covered by  
25          the policy.

26          K. The commissioner may designate an administrator to carry out any of the  
27          provisions of this Section and may take this action by means of a written contract or  
28          agreement.

1           L. For purposes of this Section, the term "claim" refers to any dispute  
2           between an insurer and a policyholder relating to a material issue of fact. However,  
3           "claim" shall not include any dispute:

4                     (1) With respect to which the insurer has a reasonable basis to suspect fraud.

5                     (2) Where, based on agreed-upon facts as to the cause of loss, there is no  
6           coverage under the policy.

7                     (3) With respect to which the insurer has a reasonable basis to believe that  
8           the policyholder has intentionally made a material misrepresentation of fact that is  
9           relevant to the claim, and the entire request for payment of a loss has been denied on  
10          the basis of the material misrepresentation.

11                    (4) With respect to which the amount in controversy is less than one  
12          thousand dollars, unless the parties mutually agree to mediate a dispute involving a  
13          lesser amount.

14          Section 2. This Act shall become effective January 1, 2017.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 839 Original

2016 Regular Session

Seabaugh

**Abstract:** Creates the property insurance mediation program.

Proposed law provides for mediation as an option available to the parties to a dispute with respect to property claims under personal lines residential and commercial lines residential policies prior to the commencement of the appraisal process or litigation. Provides that mediation is also available to litigants referred to the commissioner by a court having jurisdiction over such claims. Further provides that mediation pursuant to proposed law is not available for policies or coverages not specified in the proposed law.

Defines for purposes of proposed law that personal lines residential coverage consists of the type of coverage provided by homeowners', mobile home owner, dwelling, tenant, condominium unit owner, cooperative unit owner and similar policies, and commercial lines residential coverage consists of the type of coverage provided by condominium association, cooperative association, apartment building, and similar policies.

Mediation pursuant to the proposed law may only be requested by the policyholder as a first-party claimant, or the insurer, or their respective legal representatives.

Proposed law provides that the insurer shall notify the policyholder of the right to request mediation pursuant to proposed law. Requires the commissioner to prepare a consumer information pamphlet for distribution to policyholders regarding the mediation program.

Proposed law provides that the insurer shall bear the cost of the mediation pursuant to proposed law, which cost shall be reasonable as determined by the commissioner.

Proposed law provides that the commissioner shall promulgate rules or regulations, including emergency rules or regulations, for a property insurance mediation program to be administered by the commissioner pursuant to proposed law. The rules or regulations shall provide for:

- (1) The costs of the mediation.
- (2) The processing of requests for and scheduling of the mediation.
- (3) The qualifications for the mediators.
- (4) The selection of the mediators.
- (5) The attendance of the parties to the mediation.
- (6) The criteria for the conduct of the mediation.
- (7) The attendance of legal counsel.
- (8) The allocation of the costs of the mediation including any actual costs incurred by the parties in the event a party fails or refuses to appear at the mediation.
- (9) The requirement that each party attending the mediation have the legal authority to settle the full value of the claim.
- (10) The requirement that the fees assessed by the administrator include a charge necessary to defray the expenses of the commissioner related to his duties under proposed law.
- (11) Any other matters that the commissioner deems applicable, relevant and appropriate for the implementation and administration of a property insurance mediation program.

Proposed law deems all statements made and documents produced at the mediation to be privileged and confidential pursuant to present law.

Proposed law provides that if the mediation results in a settlement of all or any portion of disputed property claims, the settlement shall be reduced to writing by the mediator, shall be signed by all parties, and shall become enforceable as a transaction or compromise between the parties. Further requires the insurer to pay the sum agreed upon within 30 days of the date the parties execute the written settlement agreement. Provides that any settlement agreement reached between the parties is binding and acts as a release of the disputed property claims that were presented and settled at the mediation. Additionally, provides that the failure or refusal of the insurer to pay the full amount agreed upon in settlement shall entitle the policyholder to a cause of action against the insurer pursuant to the provisions of present law.

Proposed law provides that if the insurer fails to notify a policyholder of his right to request mediation or if the insurer requests the mediation and the mediation results are rejected by either party, the policyholder is not required to submit to or participate in any contractual loss appraisal process regarding the property loss damage as a precondition to legal action for breach of contract against the insurer for its failure to pay the policyholder's claims covered by the policy.

Proposed law provides that the commissioner may designate an administrator to carry out any of the provisions of proposed law and may take this action by means of a written contract or agreement.

Proposed law provides that, for purposes of proposed law, the term "claim" refers to any dispute between an insurer and a policyholder relating to a material issue of fact. However, "claim" shall not include a dispute:

- (1) With respect to which the insurer has a reasonable basis to suspect fraud.
- (2) Where, based on agreed-upon facts as to the cause of loss, there is no coverage under the policy.
- (3) With respect to which the insurer has a reasonable basis to believe that the policyholder has intentionally made a material misrepresentation of fact which is relevant to the claim, and the entire request for payment of a loss has been denied on the basis of the material misrepresentation.
- (4) With respect to which the amount in controversy is less than \$1,000, unless the parties mutually agree to mediate a dispute involving a lesser amount.

Effective January 1, 2017.

(Adds R.S. 22:1272)